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C O N F I D E N T I A L TASHKENT 001480

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AMEMBASSY BELGRADE PASS TO AMEMBASSY PODGORICA
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SUBJECT: UZBEKISTAN: NEW LAW ENHANCES RIGHTS OF DEFENDANTS, LAWYERS, AND WITNESSES

REF: a) TASHKENT 1379; TASHKENT 1225; TASHKENT 1454; TASHKENT 1247

CLASSIFIED BY: Richard Fitzmaurice, Poloff; REASON: 1.4(B), (D)

¶1. (C) Summary: In December, Uzbekistan's Parliament adopted a new law on defense attorneys which significantly increases protections for defendants, their lawyers, and witnesses. The former Chairwoman of the Tashkent Bar Association, who provided poloff with a copy of the law, described it as "revolutionary." However, she also pointed out some negative aspects, including provisions that led to the abolishment of the independent Tashkent Bar Association and its replacement by the state-controlled Chamber of Lawyers (ref A). Nevertheless, overall the Chairwoman concluded that the adoption of the new law was a positive phenomenon, and we agree with this assessment. We also have observed that the country's defense attorneys are in need of greater professionalism, and we believe that the passage of the new law provides us with an opportunity to approach the Uzbek government with an offer to provide training for defense attorneys. End summary.

PARLIAMENT ADOPTS LAW ON DEFENSE ATTORNEYS

¶2. (U) According to the state-controlled press, Uzbekistan's Parliament adopted the new law "On Introducing Amendments to Legislative Acts of the Republic Uzbekistan to Improve the Bar Association" on December 5. The law is now awaiting President Karimov's signature, which is expected to occur shortly. The draft law includes amendments to Uzbekistan's Criminal Code, Criminal Procedural Code, the Code of Execution of Penalties, the Code of Administrative Responsibility, and existing laws on "The Defense Attorney Bar" and "On the Guarantees of Practice and Social Protection of Defense Attorneys."

FORMER TBA CHAIRWOMAN SHARES COPY OF LAW

¶3. (C) Recently, former Tashkent Bar Association (TBA) Chairwoman Gulnora Ishankhanova provided poloff with a copy of the law. As she had done previously (ref B), Ishankhanova described the law as "revolutionary," noting several amendments that increased the rights and protections of both defense attorneys and their clients. However, she also criticized other aspects of the new law, particularly provisions which led to the abolishment of independent bar associations, including her own Tashkent Bar Association, and their replacement with a new state-controlled Chamber of Lawyers. Nevertheless, Ishankhanova emphasized that the positive aspects of the law outweighed the negative, and for this reason, she agreed to be interviewed on Uzbek state TV praising the new law.

¶4. (C) Ishankhanova confirmed that the TBA had officially disbanded itself, although she also reported that its members were continuing to work informally together to carry out the organization's legal assistance projects (ref A). Ishankhanova is currently serving as the Deputy Chairperson of the Tashkent branch of the new Chamber of Lawyers. She told poloff that she did not want to be the Chairperson, observing that it "would actually be harder to get rid of me as the deputy." However, in an unrelated incident, she reported that the Tashkent legal clinic, which provided local citizens with free legal assistance, had been driven out of its office due to rising rents. Its director, Kseniya Rijkova, later reported to poloff that she had recently started working for the UNDP office in Tashkent, whom she hoped would help find a new home for the clinic. UNDP is also supporting the opening of three new legal clinics in Uzbekistan's regions (ref A).

NEW LAW INCREASES PROTECTION FOR DEFENDANTS

¶5. (SBU) Poloff gave a copy of the new law on defense attorneys to the Embassy's legal assistant to analyze, who agreed with Ishankhanova that it contained amendments that significantly increased the rights and protections of defendants, their attorneys, and witnesses. The legal assistant described one of the amendments - which grants defense attorneys the same procedural rights as prosecutors - as a particularly important "breakthrough."

¶6. (U) For the first time, the law codifies a defendant's right to call their attorney or a relative after their arrest. It also allows defendants to meet with their lawyers as often and for as long as they wish. In addition, defendants are given "Miranda" protections, including the right to remain silent, and law enforcement officials must inform defendants that any statements they make can be used as evidence against them.

¶7. (U) Previously, a defendant only had the right to request a lawyer after he or she was formally charged as a suspect. As a result, defendants often lacked legal representation when first detained. In addition, lawyers needed to receive written permission from investigators and prosecutors before being allowed to see their client, which usually occurred after their clients had already been interrogated.

LAW ENHANCES RIGHTS OF DEFENSE ATTORNEYS

¶8. (U) The new law increases the rights and protections of defense attorneys, including providing them the right to file legal motions to see their clients. Lawyers are also now allowed to participate in a case from the moment their clients are detained. Lawyers are no longer required to receive permission from government officials before meeting with their clients, and they can meet with their clients before they are interrogated. The law also stipulates that meetings between lawyers and clients should occur in private.

¶9. (U) For the first time, the law also provides attorneys with the right to gather evidence independently of the prosecution, including by interviewing persons, obtaining written statements, and requesting documentation from appropriate agencies. The law also requires that law enforcement officials and prosecutors provide copies of any case materials requested by defense attorneys. Defense attorneys also may now file complaints about the actions or decisions made by law enforcement officials, prosecutors, or court officials. Attempts to impede the participation of defense attorneys in a case or "influence them" can result in a fine from 2 to 5 times the amount of the minimum wage.

¶10. (U) Previously, lawyers were unable to petition to see their clients, only their clients could ask to see them. Defense attorneys were also not allowed to make copies of case materials, but instead could only take hand-written notes while reviewing them.

LAW ALSO INCREASES PROTECTIONS FOR WITNESSES

¶11. (SBU) The law also for the first time specifies that witnesses in criminal cases may also be represented by a lawyer. Attorneys of witnesses are granted the same rights as defendants' lawyers. The Embassy's legal assistant believes that the law's granting of witnesses the right to legal representation is an especially important development. She noted that individuals who are called in by police as witnesses to testify in criminal cases are often later charged as suspects in the same crimes. As witnesses, such individuals previously enjoyed few legal rights.

VOLUNTARY BAR ASSOCIATION REPLACED WITH CHAMBER OF LAWYERS

¶12. (U) The new law also has several amendments aimed (ostensibly at least) at increasing the professionalism of defense attorneys in Uzbekistan. For example, it requires the membership of defense attorneys in a new Chamber of Lawyers and also prohibits the establishment of organizations with functions similar to the Chamber (thus outlawing existing voluntary bar associations, including the Association of Advocates of Uzbekistan (AAU) and its regional branches, such as the Tashkent Bar Association). The Chamber is tasked with representing the interests of defense attorneys, ensuring the adoption and observation of ethics rules for attorneys, and providing training and educational opportunities for its members. Sources earlier reported that the head of the Chamber of Lawyers will be chosen by the Justice Ministry, thus ensuring that the Chamber is state-controlled.

¶13. (U) Previously, bar associations in Uzbekistan were completely voluntary in nature, and attorneys were not required to be members of any bar association. It is currently estimated that only 50 percent of defense attorneys in Uzbekistan are members of existing bar associations.

¶14. (U) The new law also requires that defense attorneys become licensed, which will require two years of professional experience, including an internship of at least six months with "a defense attorney establishment." To remain licensed, defense attorneys will also be required to go through training once every three years. Defense attorneys are also prohibited from any additional "profit-making activities," except those linked to teaching or research. Once licensed, attorneys are required to either join the Chamber of Lawyers or one of its regional branches within three months. Previously, defense attorneys were not required to be licensed, and there were no formal training requirements.

DEFENSE ATTORNEYS IN NEED OF MORE TRAINING

¶15. (U) Emboffs have observed that defense attorneys in Uzbekistan are in need of additional training. In general, they appear less professional than prosecutors and judges. In particular, defense attorneys could benefit from additional training in recent legal reforms, including the new habeas corpus provisions.

¶16. (C) During her presentation at a human rights conference sponsored by the independent Ezgulik human rights group on November 28 (ref B), Ishankhanova praised the new law on defense attorneys, noting that it would give them powers equal to that of prosecutors. She also observed that many defense attorneys in Uzbekistan are unqualified and lack appropriate training. For example, she said that many defense attorneys were still unaware of the basic provisions of the habeas corpus law, which transferred the right to issue arrest warrants from prosecutors to the judiciary and limited the amount of time an individual could be held in custody without charge to 72 hours. She also noted that many defense attorneys are themselves former law enforcement officials and prosecutors, some of whom see their roles as aiding the prosecution, rather than defending the interests of their clients. During the question and answer period following Ishankhanova's presentation, one of the attendees identified himself as a defense attorney and former police officer who wholeheartedly agreed with Ishankhanova's observations. He also called on international organizations to provide more training for defense attorneys.

¶17. (C) Emboffs who attended trainings on the new habeas corpus law for prosecutors, judges, and defense attorneys conducted by the Institute for New Democracies (IND) in November concluded that defense attorneys were the least knowledgeable about the country's recent legal reforms. For example, some of the defense attorneys who attended the trainings did not know that they are allowed to review prosecutor's files prior to hearings or that they are required to attend all hearings where courts review the detention of their clients.

ABA MAY REAPPLY FOR REGISTRATION IN UZBEKISTAN

¶18. (U) In an email to poloff on December 9, the American Bar Association's Almaty office director Ivan Abrams reported hearing through an unnamed intermediary that the government of Uzbekistan would consider reregistering ABA in Uzbekistan if the organization submitted the appropriate documents, preferably before the end of the year. Abrams told poloff that ABA was seriously considering whether to apply for registration at this time.

¶19. (SBU) Note: ABA, along with most other international organizations in Uzbekistan, was forced to depart Uzbekistan following the 2005 Andijon events. It has continued to support legal assistance programs in Uzbekistan through local partners, including the Tashkent Bar Association, from its Almaty office. Throughout the year, government officials have made positive references to ABA during meetings with Emboffs, but the government also recently rejected a proposed INL legal assistance project in September which would have involved ABA's participation, ref D. End note.

COMMENT

¶20. (C) While we regret the disbandment of the Tashkent Bar Association, a reform-minded local NGO which served as an important local partner for ABA, we agree with Ishankhanova that the positive aspects of the new law outweigh the negative. If properly implemented, the provisions of the new law will greatly increase protections for defendants, witnesses, and their attorneys. As with the habeas corpus law adopted last year, the adoption of this new law again provides us with an opportunity to approach the Uzbeks with an offer to provide training to defense attorneys on recent legal reforms. As observed by Emboffs, defense attorneys in Uzbekistan are less professional than judges or prosecutors and are clearly in need of greater training. If ABA is able to reregister in Uzbekistan, it could implement a training project for defense attorneys, with the new Chamber of Lawyers as a potential local partner. The Embassy or ABA might also partner with the National Human Rights Center of Uzbekistan to publicize recent legal reforms. The Center has previously worked with UNICEF and ILO to print publications in Uzbek and Russian on anti-child labor conventions the government adopted in 2008, and the Center may be willing to print publications for defense attorneys encapsulating the provisions of the habeas corpus and defense attorney laws.

¶21. (C) Given the lack of professionalism among defense attorneys in Uzbekistan, the new law's requirements that defense attorneys be licensed and become members of professional organizations is not a bad thing. While the new requirements can be interpreted as an attempt by the government to exercise greater control over the country's defense attorneys, there is still a need for greater professionalism among defense attorneys, which licensing and participation in mandatory bar associations could help provide. As the standards of such attorneys are raised, they will more likely demand that their clients are provided the protections afforded by Uzbek law, which are now stronger than before thanks to recent legal reforms.

NORLAND

To view the entire SMART message, go to URL
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